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## E-FILING: In the Appeal of General Pacific Services: OPA-PA-26-001

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Cc: "Joshua D. Walsh" <jdwalsh@rwtguam.com>

Tue, Mar 3, 2026 at 4:38 PM

Good afternoon Mr. Hernandez:

Please see the attached document to be filed in the above-referenced matter. Should you have any questions or concerns, please feel free to contact our office. Thank you.

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Regards,  
**Sosanbra Salas Reyes**

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**3.3.26 Appellant's Opening Brief March 3, 2026 Appeal of 5 G.C.A. S 5425(g) Determination; Opposition to Substantial Interest Determination.pdf**  
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**OFFICE OF PUBLIC ACCOUNTABILITY**

In the Procurement Appeal of  
  
GENERAL PACIFIC SERVICES, LLC,  
  
Appellant.

**APPEAL NO. OPA-PA-26-001**

**APPELLANT'S OPENING BRIEF  
MARCH 3, 2026; APPEAL OF 5 G.C.A. §  
5425(g) DETERMINATION;  
OPPOSITION TO SUBSTANTIAL  
INTEREST DETERMINATION**

**I. INTRODUCTION**

Appellant General Pacific Services, Inc. ("GPS") on February 9, 2026, submitted its Notice of Appeal of the claimed Determination of Need issued by the Director of the Department of Public Works ("DPW") on Friday evening, February 6, 2026. In its Appeal, GPS asks that the Office of Public Accountability ("OPA") reject DPW's written determination to override the automatic stay triggered by GPS's timely bid protests in the procurement for the Simon Sanchez High School Finance, Demolition, Design, Build, Lease/Leaseback & Insurance/Capital Maintenance (FDDBLM) Project, Project No. 730-5-1059-L-YIG (the "Project"). This Opening Brief adopts and republishes the

Notice of Appeal filed in this matter and insofar as it relates to GPS's procurement appeal in this matter, it is filed without prejudice to further determinations and decisions that will be eventually made on GPS's appeal.<sup>1</sup>

## II. FACTUAL AND PROCEDURAL BACKGROUND

The delay of the Simon Sanchez High School ("SSHS") construction project began a decade ago when original losing bidder Core Tech International ("CTI") protested, appealed, and litigated the original SSHS procurement to a halt. Throughout that entire period, the procuring agency never once made a determination to override or ignore the automatic stay triggered by those protests. *See, e.g.*, KUAM News, "CoreTech's protest denied of [sic] DOE contract" (2016).<sup>2</sup>

CTI only relented on its protracted litigation after a delay of more than two years, when DPW agreed to let CTI "off the hook on \$3 million of liquidated damages it owe[d] the Government of Guam" from other delayed projects, cancelled the SSHS procurement, and then agreed to let CTI bid again. KUAM News, "DPW, Coretech reach settlement" (2018).<sup>3</sup> The protests brought by GPS concern the same project. The

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<sup>1</sup> The Appellant submitted its first Bid Protest of Project No. 730-5-1059-L-YIG on November 19, 2025. A Second Protest of the same Project was submitted on December 12, 2025. A protest of the separately captioned "Limited Project Scope Agreement; Simon Sanchez High School Redevelopment – FY25-26 Initial Phase Total Appropriated Value: \$16,377,125.00" was submitted on December 12, 2025. DPW has constructively denied those protests, and GPS brought an appeal before the OPA of those denials on January 28, 2026.

<sup>2</sup> <https://www.kuam.com/story/31065971/coretechs-protest-denied-of-doe-contract>

<sup>3</sup> <https://www.kuam.com/story/39373690/dpw-coretech-reach-settlement>

procurement that DPW eventually re-issued was finally sent to the public on March 21, 2025 — seven years after resolving CTI's first protest. DPW waited until June 6, 2025, to decide on a first ranked offeror, and then spent the rest of the year (more than five months) "negotiating" with CTI.

On February 16, 2026, this matter came before Office of Public Accountability Hearing Officer Joseph B. McDonald and on February 17, 2026, he ordered Appellant GPS to file a "Brief RE Opposition to Substantial Interest Determination" pursuant to a briefing schedule, providing for a Reply on March 13, 2026, and a Rebuttal on March 18, 2026, with a Hearing on March 20, 2026.

After a series of opaque responses to its requests for information, on November 19, 2025, GPS filed a protest alleging significant failures to maintain a complete procurement record that would support an award to intended awardee CTI.<sup>4</sup> On December 12, 2025, GPS filed an additional protest, alleging an improper standalone procurement for the demolition portion of the project that was already included in the main procurement, and the recently disclosed non-responsiveness of intended awardee CTI. These protests remain unresolved.

Given the discovery of a government attempt to press forward with physical work on the project site despite the protests, the lack of protest response, and the lapse of more than 60 days since DPW first received the protests, GPS brought an appeal before

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<sup>4</sup> All relevant protest and appeal documents, including the project Request for Proposal, were submitted as attachments to GPS's notice of appeal filed on January 28, 2026.

the OPA on January 28, 2026. The Notice of Receipt of Procurement Appeal was received by DPW on January 29, 2026. As is standard for such appeals, the OPA then ordered DPW to provide the Procurement Record by Thursday, February 5, 2026.

On Thursday, February 5, 2026, in the afternoon, DPW submitted to the OPA what it called a "copy of procurement records" containing a website screenshot of various hyperlinks and URL addresses. That transmittal was not served on GPS, and it did not follow any accepted form of procurement record. 5 G.C.A. § 5249; *Teleguam Holdings LLC v. Territory of Guam*, 2018 Guam 5, ¶ 34. After working hours on Friday evening, February 6, 2026, DPW issued a Determination of Need letter to its procurement file claiming that "urgency and public interest" support a decision by DPW to override the procurement stay pursuant to 5 GCA § 5425(g)(1) and proceed with an award to CTI without delay. Accordingly, on February 9, 2026, GPS submitted its Notice of Appeal of the claimed Determination of Need issued on Friday evening, February 6, 2026, by the Director of DPW. Now, GPS submits this briefing to the Public Auditor on the sole issue of why the law requires the Office of Public Accountability to reject DPW's determination of substantial need under 5 G.C.A. §5425(g)(3).

### III. STANDARD OF REVIEW

The Public Auditor's review of the DPW determination of substantial need is *de novo*. 5 G.C.A. §5425(g)(3) and §5703. *In the Appeal of Guam Education Financing Foundation, Inc.*, Appeal No. OPA-PA-09-007, "Decision and Order RE Purchasing

Agency's Motion for Confirmation of Substantial Interest," (Nov. 16, 2009) ("JFK-2").<sup>5</sup> The burden is on the purchasing agency to establish necessity. JFK-2, p. 7, lns. 8-10; *Guam Imaging Consultants, Inc. v. Guam Mem'l Hosp. Auth.*, 2004 Guam 15, ¶ 16 and ¶ 41 (after automatic stay triggered, the Court had to "determine whether necessity was adequately shown by [government agency]").

**IV. OPA UNDER 5 G.C.A. § 5425(g)(3) SHOULD REJECT THE AGENCY'S NECESSITY DETERMINATION AND REIMPLEMENT THE AUTOMATIC STAY**

**A. Guam Agencies Are Required To Implement The Automatic Stay.**

Guam's procurement law establishes a mandatory automatic stay provision that protects the integrity of the protest process. *In the Appeal of JMI Edison*, OPA-PA-13-009 "Decision" (Nov. 27, 2013) ("5 GCA § 5425(g) is triggered by a timely protest and remains until resolution"). The Public Auditor is tasked with using his or her power and authority to promote the integrity of the procurement process and purposes of 5 GCA Chapter 5. *In the Appeal of Pacific Data Systems, Inc.*, OPA-PA-15-005 (Apr. 30, 2015). The Guam Procurement Law ensures fair and equitable treatment, fosters competition, and safeguards its quality procurement system. 5 G.C.A. § 5001; *In the Appeal of Johndel International, Inc. dba JMI-Edison*, OPA-PA-23-002, (Dec. 18, 2023), p. 4. *See Carl Corp. v. State, Dep't of Educ.*, 93 Haw. 155,

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<sup>5</sup> OPA cases 09-007 and 09-005 both involve protests to the JFK High School procurement. They are substantially similar decisions involving the same subject matter but involve different protestors. Both are cited herein.

164, 997 P.2d 567, 576 (2000) (“... as part of the determination of the State's best interest, the Hearings Officer must consider, among other things, “the public interest in the integrity of the procurement code”).

Under 5 G.C.A. § 5425(g)(1),<sup>6</sup> when a timely protest is filed, "Guam shall not proceed further with the solicitation or with the award of the contract prior to final resolution of such protest, and any such further action is void." 5 G.C.A. § 5425(g). The Guam Supreme Court has consistently emphasized that this stay applies "automatically" upon the filing of a timely, pre-award protest and requires no court order to become effective. *See Pac. Data Sys., Inc. v. Guam Dep't of Educ.*, 2024 Guam 4, ¶ 20; *DFS Guam L.P. v. A.B. Won Pat Int'l Airport Auth., Guam*, 2020 Guam 20, ¶ 148; *Teleguam Holdings, LLC v. Territory of Guam*, 2015 Guam 13, ¶ 31.

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<sup>6</sup> 5 G.C.A. § 5425(g) In the event of a timely protest under Subsection (a) of this Section or under Subsection (a) of § 5480 of this Chapter, Guam shall not proceed further with the solicitation or with the award of the contract prior to final resolution of such protest, and any such further action is void, unless:

- (1) The Chief Procurement Officer or the Director of Public Works after consultation with and written concurrence of the head of the using or purchasing agency and the Attorney General or designated Deputy Attorney General, **makes a written determination that the award of the contract without delay is necessary to protect substantial interests of Guam ...**
- (2) Absent a declaration of emergency by I Maga'håga/Maga'låhi, the protestant has been given at least two (2) days' notice (exclusive of Guam holidays); and
- (3) If the protest is pending before the Public Auditor or the Court, the Public Auditor or Court **has confirmed such determination**, or if no such protest is pending, no protest to the Public Auditor of such determination is filed prior to expiration of the two (2) day period specified in Item (2) of Subsection (g) of this Section. (emphasis added)

The automatic stay serves important protective functions in the procurement process. In discussing the automatic stay provision, the Guam Supreme Court has noted in that "[t]he automatic stay provision of Guam's Procurement Code also provides a significant safeguard against government malfeasance negatively impacting the public fisc" in the context of addressing concerns about late discovery of misconduct. *DFS Guam L.P. v. A.B. Won Pat Int'l Airport Auth., Guam*, 2020 Guam 20, ¶ 70 n.15. The Court has held that "the automatic stay is a legal entitlement that vests upon a timely, pre-award protest. *DFS Guam L.P. v. A.B. Won Pat Int'l Airport Auth., Guam*, 2020 Guam 20, ¶ 148.

Federal courts similarly emphasize the importance of the integrity of the procurement system when examining whether an automatic stay should be overridden when it's required. *See Reilly's Wholesale Produce v. United States*, 73 Fed. Cl. 705, 710 (2006) (the automatic stay preserves competition and ensures a fair appeal process). There is a cost that comes when an agency rushes into a contract when a protest is pending- and this is another issue that deserves consideration and supports the preservation of the status quo. *See Supreme Foodservice GmbH v. United States*, 109 Fed. Cl. 369, 385 (2013). DPW should also as part of its review consider the potential cost and impact of its actions when it decided not to provide a timely procurement decision and then sought to override the automatic stay. *See Reilly's Wholesale Produce v. United States*, 73 Fed. Cl. 705, 714–15 (2006).

This principle is also recognized by state courts relying on statutes, such as ours, that come from the Model Procurement Code. “By maintaining the status quo during the pendency of a protest, violations of the procurement code can be rectified before the work on the contract has proceeded so far that effective remedies, for the protestor and the public, are precluded by expense and impracticality.” *CARL Corp. v. State, Dep't of Educ.*, 85 Haw. 431, 453, 946 P.2d 1, 23 (1997).

**B. The Public Auditor Must Confirm an Agency’s Necessity Determination if it Attempts to Override the Automatic Stay.**

Guam’s procurement law provides that the only mechanism for overriding the automatic stay is through strict compliance with the three-part test set forth in 5 G.C.A. § 5425(g). See 2 GAR Chapter 4 § 9101. The DPW Director must make a written determination that “the award of the contract without delay is necessary to protect substantial interests of Guam.” 5 G.C.A. § 5425(g)(1). If a protest is pending before the Public Auditor, as it is here, the OPA must confirm the agency’s necessity determination. 5 G.C.A. § 5425(g)(3). This is reflected by the Guam Procurement Regulations, which state: “the Public Auditor shall review and confirm or reject any determination by the Chief Procurement Officer or the Director of Public Works pursuant to 5 GCA § 5425(g) that award of a contract without delay pending Appeal is necessary to protect the interests of the government.” 2 GAR Div. 4 § 12115(b).

The Public Auditor’s review of the DPW determination of substantial interests is *de novo*. 5 G.C.A. §5425(g)(3) and §5703. *In the Appeal of Guam Education Financing Foundation, Inc.*, Appeal No. OPA-PA-09-007, “Decision and Order RE

Purchasing Agency's Motion for Confirmation of Substantial Interest," (Nov. 16, 2009). If any element of the statutory requirement to override the automatic stay is not met, then there is not an adequate showing of necessity. See *Guam Imaging Consultants, Inc. v. Guam Mem'l Hosp. Auth.*, 2004 Guam 15, ¶ 41 (Agency did not satisfy the requirements of the procurement law because it did not get a written concurrence from the AG and therefore did not make an adequate showing of necessity).

Once the automatic stay provision is triggered, the agency must show necessity to obtain an exception to operation of the automatic stay. *Guam Imaging Consultants, Inc. v. Guam Mem'l Hosp. Auth.*, 2004 Guam 15, ¶ 24. "[A] substantial interest determination must specifically identify the government interest and articulate why it is necessary to protect those interests and the contract be awarded without delay." JFK-2, p. 7. There is a statutory component (the agency has specified the government interest and signed a written determination that is concurred by the Attorney General) and there is a factual component (whether the alleged government interest sufficiently establishes necessity). *In the Appeal of Guam Community Improvement Foundation, Inc.*, OPA-PA-09-005, "Dec. & Order Re Purchasing Agency's Mot. for Confirmation of Substantial Interest", p. 7 (Oct. 29, 2009) ("JFK-1"). Looking at the plain language of the statute, there are actually two components: the basic necessity to protect a "substantial interest," and the temporal admonition of "without delay." 5 G.C.A. § 5425(g)(1). Therefore, this analysis needs to focus not just on the needs of

the Territory- but also must analyze the detriment that may be involved by waiting for the decision of the OPA. When determining delays, the OPA has examined its own timeline but found that it is speculative to try to estimate whether a party will appeal to the Superior Court of Guam, as well as the length of any further appeal. JFK 2, p. 8.

**C. The Director of DPW Did Not Sufficiently Determine that the Award of the Contract Without Delay was Necessary to Protect the Substantial Interests of Guam and Why the Automatic Stay Should be Overridden.**

Guam precedent from the Office of Public Accountability requires not just an enumeration of adverse impacts, but an articulation of “why it is necessary to protect those interests and award the contract without delay.” JFK-1, p. 7, lns. 10-12. It is not enough for a substantial interest to be involved; rather the agency must articulate what makes it necessary to protect those interests and issue a contract without delay. JFK-1

Looking at how “substantial interests of the State” may be determined, we can look to the 1979 Model Procurement Code (“MPC”) and its official comments which have been adopted as Guam’s own legislative history. *SH Enters., Inc. v. Territory of Guam*, 2025 Guam 10, ¶ 18.<sup>7</sup> In Hawai’i, a jurisdiction also based on the MPC, and in a line of

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<sup>7</sup> Model Procurement Code § 9-101 Commentary:

In general, the filing of a protest should halt the procurement until the controversy is resolved. In order to allow essential governmental functions to continue, Subsection (6) provides that the [State] may proceed with the solicitation or award of the contract, despite the protest, upon a determination in writing by the Chief Procurement Officer or the head of the Purchasing Agency that such action is necessary. It is expected that such a

cases cited by the Guam Supreme Court<sup>8</sup>, the *CARL* case is instructive. There, a complete cessation of library automation service was the only argument that even “approaches impairment of a substantial State interest requiring award of the contract without delay.” *CARL Corp. v. State, Dep't of Educ.*, 85 Haw. 431, 454, 946 P.2d 1, 24 (1997).

In the federal system, there is also an analogue for overriding a public procurement stay that is instructive. Agency concerns to override a stay need to be urgent and compelling, for example, like pose a public safety risk. *See Reilly's Wholesale Produce v. U.S.*, United States Court of Federal Claims 73 Fed.Cl. 705, 712 (October 26, 2006)(citation omitted). There may be important goals that an agency seeks to achieve- but that does not give the agency “license to disregard Federal procurement law...” *Id.*

#### **D. DPW Has not Demonstrated a Need to Override the Automatic Stay with the Justification it Submitted.**

DPW’s findings rely on generalized assertions of adverse impact, rather than on specific, imminent threats or unique facts compelling enough to warrant lifting the statutory stay. Under established OPA precedent and procurement law, these findings

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determination will occur only in those few circumstances where it is necessary to protect a substantial interest of the [State].  
Model Procurement Code for State and Local Governments 1979

<sup>8</sup> *SH Enters., Inc. v. Territory of Guam*, 2025 Guam 10, ¶ 31 (in the context of a debarment, the court compared *Carl Corp. v. State, Dep't of Educ.*, 997 P.2d 567, 581 (Haw. 2000) the same but subsequent case as *CARL Corp. v. State, Dep't of Educ.*, 85 Haw. 431, 454, 946 P.2d 1, 24 (1997) cited herein.)

do not satisfy DPW's burden to provide a basis for overriding the procurement automatic stay. The items that DPW puts forward in this case to justify a substantial need to override the automatic stay are very similar to those that the Public Auditor denied in the JFK cases. See JFK-1, JFK-2. Therefore, it is instructive to examine the JFK procurement decisions involving the automatic stay.

The JFK procurement protests involved the project to construct a new JFK High School. DPW attempted to justify the override of the automatic stay on a number of issues that are similar to those raised here; these justifications all failed.<sup>9</sup> GPS will now go through each of the seven (7) items that DPW claims in this case is a basis to override the automatic stay that it listed in its "Findings of Urgency and Public Interest." In so

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<sup>9</sup> The issues identified by DPW to show a substantial need to override the automatic stay in the construction procurement for JFK High School were:

- (1) Delay in the re-construction of JFK;
- (2) Legal mandates requiring the Government of Guam to provide an adequate public education;
- (3) Legal mandates requiring the timely re-construction of JFK;
- (4) Hardship caused by double sessions at GW;
- (5) Disruption of phases of JFK's education program;
- (6) Inadequacy of the temporary JFK campus located at Tiyan;
- (7) Possible increases in financing costs or the ability to obtain financing for the JFK re-construction;
- (8) Possible damage to the Government of Guam's relationship with investors;
- (9) Possible price increases in labor and materials and possible labor shortages. In the *Appeal of Guam Community Improvement Foundation, Inc.*, OPA-PA-09-005, Dec. & Order Re Purchasing Agency's Mot. for Confirmation of Substantial Interest" at 7-10 (Oct. 29, 2009).

doing, GPS will discuss both the comparison to the JFK scenario and the reasons why DPW falls short of carrying its burden here.

### **1. Ongoing Educational Disruption**

DPW claims that “Students, faculty, and staff of Simon Sanchez High School and John F. Kennedy High School continue to hold double sessions, abnormal instructional hours, and non-standard classroom arrangements due to delays in project delivery.” This is similar to justifications in the JFK protests, where the OPA found there was no necessity established to lift the automatic stay. There, item five (5) dealt with the disruption to education at JFK. *In the Appeal of Guam Community Improvement Foundation, Inc.*, OPA-PA-09-005, “Dec. & Order Re Purchasing Agency's Mot. for Confirmation of Substantial Interest”, p. 13 (Oct. 29, 2009). Even with some level of disruption, the Public Auditor found the disruption did not rise to the level of necessity that would require an override of the automatic stay to award the contract. JFK-1, p. 13. The OPA additionally found that a delay of three months to hear a protest was a minimal delay. JFK-1, p. 8. Further, in the JFK cases, the hardship was in part caused by the Department of Education decision to keep 2300 JFK students together. JFK-1, p. 12. The school continued to be accredited by WASC, and therefore there was no immediate concern that the disruption to education was so great that it demanded immediate construction. JFK-1, p. 12 (JFK students had an adequate public education under Guam law because they had an adequate, healthful, safe and sanitary learning environment). See 1 G.C.A. §715(12)(1).

In addition, here, the delay of the SSSHS construction project began a decade ago when original losing bidder CTI protested, appealed, and litigated the original SSSHS procurement to a halt. At that time, there was no effort to override the automatic stay. With CTI, DPW consistently allowed procurement stays to remain in place, freezing the status quo, even as the project languished and delays mounted year after year. DPW was also in no hurry to move this procurement along prior to GPS's protest. The procurement that DPW eventually re-issued was finally sent to the public on March 21, 2025 — seven years after resolving CTPs first protest. DPW waited until June 6, 2025, to decide on a first ranked offeror, and then spent the rest of the year — more than five months — "negotiating" with CTI. Even now, GPS's first protest was on November 19, 2025. It has been three months and DPW has not issued a decision. This delay falls squarely on DPW.

Against that history, the agency's current sudden decision to disregard the automatic stay for a different protester who filed its protest appeal eight days earlier with the OPA appears starkly inconsistent and should be considered for each element set forth by DPW that involves a temporal delay. DPW tolerated prolonged delays under CTI's serial protests and litigation maneuvers without invoking its authority to lift a stay. DPW has not shown ongoing educational disruption that would rise to a level of overriding the automatic stay.

## **2. Prolonged Temporary Conditions**

DPW claims that “Temporary arrangements have persisted for several years. These conditions have resulted in sustained disruption to instructional time and increased strain on students, educators, administrators, and families.” A similar argument was made in the JFK protests, but the OPA found that this did not rise to the level of necessity needed to override the automatic stay and award the contract. This item number two (2) implicates the same analysis as item (1) and is adopted herein.

In addition, it is similar to JFK item four (4) (hardship caused by double sessions) in that there were prolonged conditions that were not ideal, like double sessions. *See*, JFK-1, p. 12. The Public Auditor was persuaded by the fact that the school was still accredited, and that is the case here.

## **3. Material Educational Harm**

DPW claims that “Continued delay directly affects the quality, consistency, and effectiveness of educational instruction. Loss of instructional time and irregular schedules materially impair the educational mission of both schools.” This argument was made in the JFK cases as well, where the students lost thirty (30) minutes of instruction per day. JFK – 1 at p. 3, ¶ 4; p. 12. But the school continued to be accredited, and this was an important consideration for the Public Auditor to find there was no necessity to lift the automatic stay. *Id.* at p. 12.

It is important to also consider that actions taken by the Guam Department of Education that result from a lack of communication, poor planning, or poor decision-

making but do not otherwise result in a violation of law or accreditation should not drive a procurement appeal. See JFK – 1, pp. 15-16. Instead, the Public Auditor has in the past put the burden of the adequacy of public education where it belongs- on DOE. JFK-1, p. 16. For example, in the JFK cases, DOE could have placed the JFK students at more than one school to spread out the effects from shutting one school, but chose not to. *Id.* DOE's choices may possibly be made better, but cannot be the tail that wags the dog of a major infrastructure construction project.

#### **4. Safety and Facility Concerns**

DPW claims that “Prolonged reliance on temporary or shared facilities raises ongoing concerns regarding facility adequacy and student welfare.” Showing safety and facility concerns is something DPW would need to provide evidence for, and there is none. In the JFK cases, there were allegations of environmental contamination of Tiyan, and a failure to provide tables in the chemistry lab and books in the library. See p. 14-16. Because the contamination issues had been addressed prior to the establishment of the JFK interim Tiyan campus, none of these rose to a level where the automatic stay could be overridden. In addition, the facilities in JFK were ADA (Americans with Disabilities) compliant, so the building facilities were not considered to be a reason to override the automatic stay. This Project has been planned for ten years. If there were truly an immediate safety or facility concern, DOE has the power to move the students. Discomfort or an unwillingness to address a problem does not provide a reason to lift the automatic stay.

## **5. Rising Costs and Fiscal Impact**

DPW claims that “Construction costs in Guam continue to increase. Further delay increases the risk of cost escalation and places avoidable pressure on public resources.” As a general matter, construction costs may rise, but in the JFK cases the Public Auditor was not willing to risk damage to the procurement system on this basis.

In JFK – 1, the Public Auditor stated:

“If DPW truly feared that financing costs were rising, it should have terminated negotiations with IBC and it should have started negotiations with the next most qualified offeror. In fact, this eight-month delay caused by the delayed notice and the negotiations between DPW and IBC far exceeds the minimal delay caused by this appeal. Further, DPW failed to show that the short delay caused by the Appellant's protest and this appeal has actually resulted in higher investment or borrowing costs.” JFK – 1, p. 17 lns. 12-18.

Clearly, an issue such as the ten-year delay of the SSHS construction project should figure into this stated justification. DPW already spent over five months negotiating with CTI — longer than the response time for the procurement. A multi-month delay for negotiations exceeds the delay that will be caused by a procurement appeal and should not be a basis to override the automatic stay.

## **6. Legislative Intent**

DPW claims that “The Ma Kahat Act was enacted to facilitate timely delivery of major public infrastructure projects. Continued delay frustrates this legislative purpose.” There is no question that there is legislation to build SSHS. Similar to the JFK cases, there were legal mandates requiring the re-construction of JFK. See JFK-1,

p. 11. But the OPA considered DPW's lack of timeliness in that project as well and found that it did not rise to a level where the automatic stay should be overridden. The fault and burden of long-term noncompliance under a law by a government agency should not be placed on a bidder for participating in and upholding the integrity of the procurement process.

## **7. Public Interest Balance**

DPW claims that "Proceeding with project execution serves the public interest. It supports restoration of normal educational operations, mitigates further educational harm, and reduces foreseeable cost escalation. It also preserves all statutory appeal rights." Similar to the JFK cases, it is a truism that this project serves the public interest, but with ten (10) years of prior delay it is not reasonable to override a nascent procurement stay that is in place to uphold the integrity of the Project. Especially given the past history on this Project with CTI, there is no reasonable excuse to override the automatic stay.

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**V. REQUESTED ACTION**

For the foregoing reasons, GPS respectfully requests that the OPA:

1. Reject DPW's written determination purporting to override the automatic stay for Project No. 730-5-1059-L-YIG; and
2. Confirm that the automatic stay remains in full force and effect pending final resolution of GPS's protests and related appeal.
3. For such other relief that the OPA determines is proper.

**Respectfully submitted** this 3rd day of March 2026.

**RAZZANO WALSH & TORRES, P.C.**

By: \_\_\_\_\_

  
**JOSHUA D. WALSH**  
*Attorneys for Appellant*  
*General Pacific Services, LLC*

## SUPPORTING EXHIBITS, EVIDENCE OR DOCUMENTS

The supporting exhibits, evidence, and documents previously provided for the underlying Notice of Appeal are hereby incorporated into this Opening Brief:

Attachment A	RFP for Project No. 730-5-1059-L-YIG	March 21, 2025
Attachment B	Selection Process Notification letter	June 6, 2025
Attachment C	Sunshine Act Request	October 30, 2025
Attachment D	DPW extension response to Sunshine Act Request	November 10, 2025
Attachment E	Correspondence re: missed production	November 17, 2025
Attachment F	Bid Protest 1	November 19, 2025
Attachment G	Sunshine Act Request	November 25, 2025
Attachment H	DPW extension response to Sunshine Act Request	December 2, 2025
Attachment I	Bid Protest 2	December 12, 2025
Attachment J	Bid Protest 3 ("Initial Phase")	December 12, 2025
Attachment K	Follow up Correspondence	January 16, 2025

**CERTIFICATE OF SERVICE**

I, JOSHUA D. WALSH, do hereby certify that on the 3<sup>rd</sup> day of March 2026, I will cause to be served a true and correct copy of the **APPELLANT'S OPENING BRIEF MARCH 3, 2026; APPEAL OF 5 G.C.A. § 5425(g) DETERMINATION; OPPOSITION TO SUBSTANTIAL INTEREST DETERMINATION** on the following counsel via electronic service:

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